

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWANDA WESTERN,)
)
Plaintiff,)
)
v.) No. 10 C 374
)
UNITED PARCEL SERVICE, INC.,)
)
Defendant.)

MEMORANDUM ORDER

United Parcel Service, Inc. ("UPS") has filed its Answer and Affirmative Defenses to the Amended Complaint ("AC") brought against it by Lawanda Western under the auspices of the Americans with Disabilities Act. This memorandum order is issued sua sponte to address one problematic aspect of that responsive pleading.

Although all other paragraphs of the AC have been met with admissions or denials in accordance with Fed. R. Civ. P. ("Rule") 8(b)(1)(B), Answer ¶¶2, 6 and 8 seek to obtain the benefit of deemed denials via disclaimers under Rule 8(b)(5).¹ But having done so, UPS THEN goes on to deny the disclaimed allegations of the AC. That is of course oxymoronic--how can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)?

¹ Answer ¶¶2 and 8 track that Rule correctly, while Answer ¶6 does not--see App'x ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001).

Accordingly those flat-out denials in Answer ¶¶2 and 8 are stricken without leave to amend, while the second sentence of Answer ¶6 is stricken in its entirety, but with leave granted to file an appropriate disclaimer if that can be done in compliance with the objective good faith requirement of Rule 11(b). Any such replacement must be filed on or before July 16, 2010, failing which the corresponding allegation of the AC will be deemed to have been admitted.



Milton I. Shadur
Senior United States District Judge

Date: July 8, 2010